Volume of Timber Harvesting in Clayoquot Sound

Complaint Investigation 020370

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The Investigation

This report deals with a complaint that the amount of harvesting in a forest development plan (FDP) was insufficient to meet the requirements of the *Forest Practices Code of British Columbia Act* and its regulations (the Code).

On February 13, 2002, a resident of Ucluelet (the complainant) submitted a complaint to the Forest Practices Board. The complainant asserted that a company's 2001-2005 FDP did not meet the requirements of the Code. Specifically:

1. the FDP did not propose five years' worth of timber harvesting as required by the Code;

2. the licensee did not address the comments that the complainant had provided during the public review and comment period; and

3. the statutory decision-makers did not give adequate consideration to social and economic factors when approving the plan.

Background

In 1993, government announced a land-use decision for Clayoquot Sound, which permanently protected parts of the sound and also dedicated areas to resource use and special management. The same year, government established an international scientific panel to develop sustainable forest practices for Clayoquot Sound. In 1994, government appointed a joint management board, known as the Central Region Board, to oversee land and resource use decisions. The regional board included representatives from five First Nations and members of the public.

In July 1995, government adopted the Clayoquot Sound Scientific Panel (CSSP) report and announced that work was beginning on watershed assessments. Even though government made this land-use decision and announced that the CSSP report was accepted and would be implemented, the CCSP was never declared a higher-level plan under the Code. Nevertheless, government endorsed the CSSP recommendations as policy and guidance for licensees when proposing harvesting, and for statutory decision-makers to consider when approving operational plans.

Iisaak Forest Products Ltd. (the licensee) proposed nine cutblocks in its FDP for Tree Farm Licence (TFL) 57 and Timber Licence 846. The FDP covers a five-year period for harvesting in two watershed units located in Clayoquot Sound near Ucluelet.

The tree farm licence and timber licence are managed by the licensee, subject to the CSSP recommendations.

The CSSP recommendations are both practice- and planning-oriented. Some recommendations are specific to forest practices, such as restrictions on road building in sensitive terrain. As well, the Minister of Forests at the time stated that undisturbed watersheds would not be logged until ecological assessments, such as watershed plans, were completed and their recommendations were implemented. Consequently, watershed plans are needed before harvesting can occur in undeveloped watersheds. No watershed plans exist for these areas, so there has been no harvesting in undeveloped watersheds for approximately five years.

In cooperation with First Nations, MSRM is now responsible for completing the watershed plans. MSRM expects to complete 3 of 15 watershed plans by the fall of 2002. However, MSRM is concerned that there will be delays in completing the remaining watershed plans, due to a lack of funds and resources.

On February 19, 2001, the licensee made its 2001-2005 FDP available for public review and comment. The complainant submitted comments as part of the FDP public review and comment process on April 21, 2001. Although the licensee responded to the comments, the complainant asserted that the concerns were not addressed. The licensee provided the complainant's submission and the licensee's response to the statutory decision-makers prior to FDP approval.

The Ministry of Forests (MOF) and the Ministry of Water, Land, and Air Protection (MWLAP) jointly approved the FDP. The MOF district manager approved the plan on November 30, 2001, and the MWLAP regional manager did so on December 4. The district manager provided a written rationale for her decision on March 5, 2002. The MWLAP regional manager did not produce a written rationale.

Issues Investigated

The Board examined the following questions:

1. Did the amount of harvesting proposed in the FDP meet Code requirements?
2. Did the licensee meet the Code's requirements for addressing comments received during the public review and comment period?
3. Did the statutory decision-makers adequately consider social and economic factors in their approval of the FDP?

Did the amount of harvesting proposed in the FDP meet Code requirements?

The complainant asserted that, while the FDP may have been for a period of five years as required by section 10(1)(a) of the *Forest Practices Code of British Columbia Act*, there was not enough harvesting proposed to provide the licensee with five years worth of timber.

Therefore, the complainant believes that the statutory decision-makers erred in approving the plan.

The plan proposes harvesting in two watershed units within the TFL, consisting of nine cutblocks with an estimated total volume of 106,000 cubic metres. The licensee's allowable annual cut (AAC) for the entire TFL is 110,390 cubic metres. This means that the licensee could harvest what is proposed in the FDP in just one year. The FDP's harvest summary table indicates that the cutblocks will be harvested between 2001 and 2003.

Section 10(1)(a) of the Act states that an FDP must cover a period of at least five years, unless otherwise prescribed. Section 10(1)(b) states that for the area under the plan, an FDP must include maps and schedules describing the size, shape and location of cutblocks proposed for harvesting during the period. The timing of proposed timber harvesting and related forest practices must also be included. Section 3 of the *Operational Planning Regulation* (OPR) states that the "period of the plan" refers to the five years required to be covered by an FDP under section 10 of the Act.

Lastly, section 18 and 20 of the OPR specify the content requirements of an FDP. There is no Code requirement for a licensee to depict or propose a volume of timber in an FDP. This is probably because the *Forest Act*, not the *Forest Practices Code of British Columbia Act*, regulates how much timber a licensee may harvest. The chief forester establishes an AAC, which is apportioned among the licences in the management unit. The Board cannot investigate actions or decisions made under the *Forest Act*.

The licensee states that section 10 of the Act only refers to the time period of the plan, and since its FDP is for a five-year period, the FDP complies with the Code. The licensee points out that the FDP covers a very small portion of the TFL and additional volume will be proposed in subsequent FDPs. The FDP states that the areas selected for harvest follow the CSSP recommendations to harvest only in developed watersheds until watershed planning is completed elsewhere in the TFL. The licensee maintains that the lack of watershed plans and the CSSP recommendations have constrained planning for forest harvesting in its operating area. However, the licensee anticipates that the completion of the Flores watershed plan could give the company an additional 5 to 10 years of harvesting in the near future.

The MOF district manager's rationale stated that the FDP complied with section 10 of the Act. The district manager interprets section 10 as only referring to a time frame for an FDP and not to volume of timber. The district manager explained that the *Forest Practices Code of British Columbia Act* does not restrict the amount of harvesting proposed in "the area under the plan." That is done under the *Forest Act*'s cut control process. In an FDP, a licensee must consider the legislative requirements and its business plan needs, including such factors as projected markets for species and grades, operating costs, social objectives, and any environmental guidance such as the CSSP recommendations. Furthermore, the district manager considers that forest practices proposed within the five-year period are related to a

defined area under the plan and not to a tenure agreement such as a licence. In her view, there is no Code requirement for an FDP to cover the entire land base of a TFL.

The district manager noted that it is not uncommon for a licensee to propose more than one FDP under a single tenure agreement. For example, large TFLs covering extensive areas within a forest district, and often covering more than one forest district, routinely have more than one FDP covering different geographic areas.

In this case, the district manager's rationale indicates that she considered that the FDP proposed operations for the five-year period in the defined area under the plan (the two watersheds in the TFL). She considered the proposed operations reasonable, considering all Code requirements and the expectation of harvesting under the CSSP recommendations.

The MWLAP regional manager did not prepare a rationale for his decision. He explained that FDPs are not static documents. FDPs are renewed yearly, so volumes can be adjusted in successive years as required to meet licence-wide cut-control provisions. He agreed that the lack of watershed plans has constrained the licensee so far. However, some watershed plans are near completion and there may soon be opportunities to harvest more timber in the TFL.

The Board interprets section 10(1)(a) of the Act as requiring the licensee to propose developments for a five-year period for the area under the plan, but not necessarily five years' worth of timber volume. The FDP only covers a portion of the geographic area of the TFL. Therefore, concurrent or subsequent FDPs for different geographic areas can make up required volume. While some licensees may approach this situation using several development plans, other licensees use just one plan with sections for different operating areas.

In this case, the licensee proposed five years of operations in the two watershed units in the TFL. The licensee was restricted by the CSSP recommendations requirement that watershed plans be complete prior to forest development planning, and by a lack of completed watershed plans. The licensee may still propose harvesting in other operating areas in the TFL in the future.

The Board concludes that the licensee's FDP does provide for a five-year period as required under section 10 of the Act for the two watershed units defined by the licensee as the area under the plan. The Act does not explicitly link timber volume to the five-year term of an FDP.

Did the licensee meet the Code's requirements for addressing comments received during the public review and comment period?

Under section 29(1) of the OPR, the licensee must consider all comments about proposed category A cutblocks and roads received during the public review and comment period for its FDP. The licensee is required to make only those revisions to the proposed FDP that it considers appropriate, based on the comments received. As well, under section 30 of the OPR, the licensee must submit to MOF a copy of every written comment received, and a summary of revisions made to the proposed FDP in response to the comments.

The complainant submitted his comments in a letter dated April 21, 2001. On May 2, 2001, the licensee responded by letter to the complainant. Some of the issues raised by the complainant related to another licensee or MOF's small business forest enterprise program (SBFEP). The complainant asked where the SBFEP was harvesting in the area of the FDP, and how much volume had been allocated to that program. The licensee wrote that there were ongoing discussions with MOF about 8,625 cubic metres of SBFEP wood. The complainant also asked if cutting permits belonging to the previous licensee could be re-issued and harvested. The licensee did not respond to this specific question. The Board finds that it was reasonable for the licensee to not change its FDP in response to comments that related to another licensee or the SBFEP.

The complainant also asked why the volume proposed for harvesting was so low. In his opinion, the plan didn't address the social and economics needs of the community, such as the need to provide local jobs. As well, the complaint asked why the licensee did not have to abide by standard cut-control levels. The licensee wrote the complainant, explaining that its operations were constrained by the delay in completion of watershed plans. When the chief forester set the AAC, he directed that the AAC for the TFL was a maximum, not a minimum. The chief forester further stated that the timing and placement of harvesting would be subject to detailed watershed plans and the implementation of other recommendations by the CSSP. The licensee also noted that protocols in development with First Nations affected its planning and harvesting activities.

In summary, the licensee responded that the CSSP recommendations provided the technical basis for the licensee's approach in the FDP. The licensee was committed to balancing the protection and maintenance of the ecological integrity of Clayoquot Sound with socio-economic values. These were general issues related to higher-level planning and government's direction for the management of the area. These issues did not relate to operational details such as proposed cutblocks or roads in the FDP. The Board finds it was therefore reasonable for the licensee not to change its FDP in response to those concerns.

Finally, the complainant asked why the FDP proposed helicopter logging in areas where conventional logging was possible. The licensee responded that 70 percent of the 2001 harvesting would be done by helicopter. The licensee chose among yarding systems based

on site-specific factors and consideration of social and economic impacts of various systems. Helicopter logging often was chosen to comply with the CSSP recommendations.

Under the Code, the licensee's choice of harvesting system can only be directed or constrained by government through a higher-level plan, or if a specific harvesting system is required to protect the environment. In this case, the licensee chose helicopter logging to meet the policy guidance of the CSSP recommendations and its own business prerogative. There was no indication that helicopter logging would result in increased risk to resources. The Board finds that it was reasonable for the licensee not to change its FDP in response to comments that related to harvesting systems.

Many of the issues raised by the complainant were not directly relevant to the licensee's proposed category A cutblocks and roads. Several items explored the licensee's approach to its operations, or cut control. Although the licensee chose to consider and respond to some of the complainant's general comments, it was not obligated by the Code to make changes. The FDP submitted to MOF for approval contained both the complainant's letter and the licensee's response. The FDP includes a summary of revisions, which lists the agency or person making comments, a description of the issue and any changes made to the FDP in response to comments. The complainant's letter is listed in that summary.

The Board concludes that the licensee complied with sections 29 and 30 of the OPR. The licensee considered all the complainant's comments received during the public review and comment period, made revisions it considered appropriate, and gave MOF a copy of the comments received and a summary of all revisions made to the proposed FDP.

Did the statutory decision-makers adequately consider social and economic factors in their approval of the FDP?

Section 41(1)(b) of the Act requires that a district manager be satisfied that an FDP will adequately manage and conserve forest resources of the area to which it applies. That determination is discretionary. The standard the Board uses in evaluating discretionary decisions is not whether, in the Board's opinion, the decision was the best decision. Rather, the Board considers whether the decision is consistent with sound forest practices, if it achieved the intent of the Code, and if it was based on an adequate assessment of available information.

In this case, the Board examined whether statutory decision-makers were required to consider social and economic factors when approving the FDP. If the statutory decision-makers were required to consider social and economic issues, did they do so?

The words "adequately manage and conserve" can be widely interpreted because the Act does not provide an explicit definition. Therefore, defining the purpose of section 41 has become difficult. The Act's preamble states that the intent of the legislation is to balance a wide range of resources, values and human needs. But what does such balancing involve?

The Board considered that question in its report *Section 41 of the Forest Practices Code - Adequate Management and Conservation of Forest Resources* (March 2002). The Board considered two opposing views on how section 41 can be used by statutory decision-makers.

One view assumes that section 41(1)(b) has a conservation purpose. That is, the balancing decision need not specifically consider social and economic factors because those are considered at a broader level, such as land-use planning, and also in other laws such as the *Forest Act*. Read in this way, the Act's preamble anticipates balancing as a strategic planning exercise, done before a district manager has to decide on approval of operational plans.

A second view has a district manager, in section 41(1)(b), balancing the full range of competing or conflicting forest resources and forest values, including social and economic values. This view maintains that, when resources are in conflict, district managers need to engage in a balancing at the operational planning level—especially if there is no direction from higher-level strategic plans.

In its Section 41 report, the Board concluded that section 41(1)(b) provides a safety net for resource values that are not contemplated by higher-level plans. The safety net can have differing purposes, from conservation to resolving resource-value conflicts, to balancing forest values and resource uses. However, the Board provided no more detailed guidance on interpretation. Instead, the Board recommended that, whatever interpretation of section 41(1)(b) is taken, statutory decision-makers ensure that the basis for approving any operational plan or permit is made clear to any interested party.

The complainant believes that the statutory decision-makers treated section 41 primarily as an environmental balancing decision, and did not consider social and economic implications of the approval. The complainant prefers the other view, that statutory decision-makers must consider the management and balance of social, economic and environmental values in section 41 decisions.

Lastly, the complainant was concerned that, once the FDP had been approved, the approval allowed the licensee to avoid cut-control regulation under the *Forest Act*. The Board believes that this is not the case. An FDP approval under the Act does not relieve a licensee of its obligations under the *Forest Act*.

The MOF district manager stressed that the *Forest Practices Code of British Columbia Act* was written as companion legislation to the *Forest Act*. In her view, the primary way to address economics and social issues is through the *Forest Act's* cut-control provisions and the chief forester's AAC determinations. Nevertheless, the district manager stated that, depending on the circumstances, FDP approvals under section 41(1)(b) could also include social and economic impacts. If she had strong concerns about possible social or economic impacts, she would have weighed those factors. In this case, the district manager stated that she was aware of the implications of the lack of watershed plans on the licensee.

As well, the district manager had read all public comments received on the FDP, including the complainant's. She concluded that the licensee's consideration of the comments was adequate. The district manager stated that she was aware that the FDP only covered a small area of the TFL, and that additional FDPs for other geographic areas within the TFL or replacement FDPs could provide additional harvest volumes in the near future. As a result, the district manager did not believe that social and economic issues should be given much weight. Consequently, her written rationale does not discuss social and economic impacts of the approval.

The MWLAP regional manager placed importance on the licensee's need to operate under the recommendations of the scientific panel. A low level of harvest was not surprising, due to the many reserves dictated by the scientific panel. The regional manager had reviewed the complainant's comments during the public review and comment period, and concluded that the licensee's consideration of the comments was adequate. The regional manager stated that there was no conclusive indication that the licensee would not meet its five-year cut control. The regional manager concluded that the low level of planned harvest was not a major issue for MWLAP, and was a minor factor in his approval of the FDP.

The Act does not explicitly state what statutory decision-makers must consider when approving a development plan under section 41(1)(b). Decision-makers therefore have wide latitude in what they consider in determining whether an FDP adequately manages and conserves the forest resources. In this case, both statutory decision-makers considered that the social and economic impacts of the approval were not very significant.

The Board concludes that the statutory decision-makers' weighting of social and economic issues during FDP approval was consistent with the intent of the Code. Social and economic concerns with the low level of harvesting proposed in the plan were not significant to the approval because the FDP only covered a small portion of the TFL, and because subsequent FDPs are likely to propose more harvesting in other areas of the TFL when watershed planning is completed.

Conclusions

The Clayoquot Sound Scientific Panel recommendations require that watershed assessments be completed prior to forest development planning, but few assessments had been completed. That restricted the licensee's choice of proposed timber harvesting. The Board concludes that the licensee's FDP did provide for a five-year period as required under section 10 of the Act for the two watershed units defined by the licensee as the area under the plan, even though operations indicated a relatively small volume. The Act does not explicitly link timber volume to the five-year term of an FDP.

Many of the issues raised by the complainant were not directly relevant to the licensee's proposed category A cutblocks and roads. Although the licensee chose to consider and

respond to some of the complainant's general comments, it was not obligated by the Code to respond to them all. The Board concludes that the licensee complied with sections 29 and 30 of the OPR. The licensee considered all comments received during the public review and comment period, made revisions it considered appropriate, and submitted a copy of the comments received and a summary of all FDP revisions to government.

The Act does not explicitly state what statutory decision-makers must consider when approving an FDP under section 41(1)(b). In this case, both statutory decision-makers considered that the social and economic impacts of the approval were not very significant for FDP approval. The Board concludes that the statutory decision-makers did not consider social and economic issues as significant factors in determining that the FDP adequately managed and conserved forest resources. The FDP only covered a small portion of the TFL, and subsequent FDPs are likely to propose more harvesting in other areas of the TFL once watershed planning is complete. The Board concludes that the decision-makers adequately considered social and economic factors in their approval of the FDP.

Commentary

The full implementation of the Clayoquot Sound Scientific Panel recommendations depends on the completion of the watershed unit plans and declaration of the recommendations as a higher-level plan. Strategic land-use plans at the general and specific levels need to be completed if the Code is to ensure that all forest resources on public lands—including social and economic resource values—are adequately managed and protected.

This investigation has demonstrated that the lack of strategic plans has direct implications for public confidence in forest management. In this case, the licensee is restricted to harvesting in a very small portion of the TFL. Timely completion of watershed unit plans would have provided more certainty for the licensee, and may have enabled the licensee to address the complainant's concerns about the lack of timber harvesting.